



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1998

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-2880

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119213.

The City of Coppell (the "city") received a request for 36 categories of information regarding both criminal investigations and internal affairs matters. The city assigned file numbers 4293(1) through 4301(2) to these requests. You indicate that the city either has released or does not have information responsive to 24 of the categories of requested information. You seek to withhold information responsive to twelve of the requested categories of information: the city's file numbers 4294(4), 4294(5), 4295(3), 4295(4), 4296(1), 4296(2), 4296(4), 4297(1), 4297(3), 4298(2), 4298(3), and 4298(4). You contend that this information may be withheld under sections 552.103(a) and 552.108 of the Government Code.

Section 552.108(a)(1) and (2) except from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an

investigation that did not result in conviction or deferred adjudication[.]

You say that information responsive to request number 4294(4) “relates to a criminal investigation that did not result in either a finding of guilt or deferred adjudication.” Based on your representations we conclude that you may generally withhold information responsive to request number 4294(4) under section 552.108(a)(2).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other exception to disclosure, the city must release these types of information in accordance with *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Also, you must release any information responsive to request number 4294(4) that has already been made available to the public.¹

You contend that information responsive to request number 4295(3) “pertains to a criminal investigation that is currently an open case and under investigation by the Coppell Police Department.” The information you submitted as responsive to request number 4295(3) indicates that the statute of limitations on prosecution of the offense alleged there has run. See Penal Code § 42.07. You have not demonstrated how release of this information would now interfere with law enforcement. Therefore, you may not withhold this information under section 552.108.

The city seeks to withhold the remaining information at issue -- pertaining to requests number 4294(5), 4295(4), 4296(1), 4296(2), 4296(4), 4297(1), 4297(3), 4298(2), 4298(3), and 4298(4) -- under section 552.103. You submit representative samples of the responsive information.²

¹See, e.g., Open Records Letter No. 95-1353 (1995), which ordered the release of information which appears to correspond to the information sought in the instant request, number 4294(4). We note that a small portion of the information ordered released in Open Records Letter No. 95-1353 (1995) was made available to the requestor there under section 552.023, which provides for a special right of access to confidential material protected by privacy law. Information made available to the requestor in Open Records Letter No. 95-1353 (1995) by a special right of access must be withheld from the requestor here. See also § 552.352 (criminal penalties for release of confidential information).

²In reaching our conclusion, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You indicate that the information for which you claim the protection of section 552.103(a) here relates to two anticipated litigation claims the city has previously made. *See*, Open Records Letters No. 98-1084 (1998) and 98-2469(1998). Assuming that the litigation in question is still anticipated or pending, we conclude that you may continue to withhold the information we permitted you to withhold in Open Records Letter Nos. 98-1084 (1998) and 98-2469(1998). In our opinion, however, you have not established that the remaining information you seek to withhold under section 552.103 relates to such litigation. Therefore, you must release it.³

Please note, however, that absent special circumstances, which the city has not shown here, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize the governmental body to withhold materials which have

³The only file you submitted of those for which you claim the protection of section 552.103, was one we permitted you to withhold in Open Records Letter No. 98-1084. Please note that in releasing the files which you did not submit and which we have ordered you to release, you must withhold information made confidential by law. *See e.g.* Gov't Code §§ 552.117 (peace officer and city employee address, telephone number, social security number, and family information), 552.130 (Texas driver's license, motor vehicle registration and title information), 552.352 (criminal penalties for release of confidential information).

already been made available to the public. Open Records Decision No. 436 (1986).⁴ The applicability of section 552.103 ends once the litigation is concluded. Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119213

Enclosures: Submitted documents

cc: Mr. Richard Jackson
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(w/o enclosures)

⁴We note that Open Records Letter No. 98-2469 (1998) ordered the release of some of the information for which you had sought the protection of section 552.103(a) there. You may not withhold such material, or other material already made public pursuant to decisions of this office or otherwise, in response to the instant request.